



KENTUCKY ASSOCIATION OF HEALTH CARE FACILITIES • REPRESENTING LONG TERM CARE IN KENTUCKY

December 8, 2014

Office of Health Policy
c/o Diona Mullins, Policy Advisory
Cabinet for Health and Family Services
275 East Main Street, 4W-E
Frankfort, Kentucky 40621

RE: KAHCF comments to the October 8, 2014, Special Memorandum – CON
Modernization Comments

Dear Ms. Mullins:

I am writing on behalf of the members of the Kentucky Association of Health Care Facilities ("KAHCF"). First, I want to thank the Cabinet for Health and Family Services, Office of Health Policy for seeking comments from Kentucky stakeholders on the Certificate of Need ("CON") program and the State Health Plan ("SHP"). KAHCF is a member-driven organization representing for-profit, not-for-profit, and government nursing facilities and personal care homes throughout the Commonwealth of Kentucky. KAHCF members support the CON program as a means to control the costs and quality of long term-care services in Kentucky.

KAHCF appreciates the opportunity to provide recommendations on how the Office of Health Policy can modernize both the CON program and the SHP plan to better serve long-term care residents who live in and receive services from Kentucky's nursing facilities. KAHCF also recommends that the Cabinet look at the entire health care delivery system it regulates on a broad scale in order to develop a holistic approach to access. Our members embrace the notion of a long-term care system that recognizes the importance of a true continuum of care and the role that Kentucky's long-term care providers play in that continuum.

KAHCF understands that the following core principles are guiding the Office of Health Policy in its review of the Kentucky CON program and the SHP:

- (1) Supporting the Evolution of Care Delivery;
- (2) Incentivizing Development of a Full Continuum of Care;
- (3) Incentivizing Quality;
- (4) Improving Access to Care;
- (5) Improving Value of Care;
- (6) Promoting Adoption of Efficient Technology; and
- (7) Exempting Services for which CON is no longer necessary.

KAHCF supports the Evolution of Care Delivery. Although it is true that the trend in health care is moving toward “an outpatient-centric model,” a true continuum of care cannot exist without recognizing the importance of every level of care in the continuum, which includes nursing facility and personal care services. KAHCF believes that the current CON program, SHP, reimbursement, and regulatory scheme in Kentucky do not incentivize coordination of care among the health care spectrum. Kentucky’s health care system needs a transformation, especially in post-acute and long-term care services and supports.

KAHCF firmly believes that facility-based providers should be given priority through the CON and licensure process to meet the needs of their communities in the changing health care environment – recognizing that it is important to build upon what is already working and moving toward meeting the demands of this new environment. Simply put, KAHCF members are the experts in caring for Kentucky’s elderly population and are already an important piece of the health care continuum. Both consumers of long-term care services and the payers of those services are making demands for change in the delivery model – one that focuses on shorter rehabilitation stay or outpatient care after a hospital discharge. KAHCF believes that the current providers of that care should be not only incentivized through the CON program, licensure process, and Medicaid reimbursement to offer those services, but also be given priority in the process to accomplish those goals. KAHCF members are the solution to providing additional services in the home and community based waiver programs.

Our members are already responding to this trend by increasing the outpatient rehabilitation services they offer to their community. Our members currently provide the following post-acute and long term care services and supports: 1) long-term skilled nursing services; (2) short-term rehabilitation; (3) outpatient rehabilitation; (4) personal care services; (5) memory care; and (6) end-of-life care. Our members can do much more, but the government regulatory process often hinders innovation and progress in these areas. The regulatory model should incentivize, encourage, and promote long-term care providers to adopt cultural change within their own organization through redesign and renovation of existing structures, as well as organizational change throughout so that long-term care providers can meet the changing needs of the elderly population.

KAHCF recommends that the CON and licensure process be streamlined to make it easier for existing licensed nursing facilities to renovate and/or build on to existing structures to increase outpatient rehabilitation services, as well as other outpatient services to the community. Additionally, KAHCF recommends that the Medicaid reimbursement system incentivize existing licensed nursing facility providers to establish new and/or additional outpatient rehabilitation services. Some of our members are the largest health care provider in their community; employing licensed and certified health care workers, who provide a wide range of health care services. Utilizing their existing health care delivery infrastructure, our members could provide and be reimbursed for additional services to the community and to their residents such as transportation, meals, activities, and flu shots. The CON process, the licensure process, and Medicaid reimbursement should recognize the existence of long-term care providers and look to them to provide a wide-range of post-acute and long-term care services and supports to the community they already serve.

KAHCF supports Incentivizing the Development of a Full Continuum of Care. KAHCF members are already experiencing new payment models that reflect the goals of “timely, coordinated care in an appropriate setting.” Payers are focusing on goals such as a reduction in re-hospitalizations. Coordination of care and communication among the continuum of health care providers are important to accomplishing these goals.

Long-term care providers understand the needs of the elderly population in Kentucky. Our members are well-positioned to provide a fuller continuum of care than is currently recognized or allowed for under the current CON and licensure process.

KAHCF recommends that the CON process and the licensure process be amended to allow for currently licensed long-term care providers to expand the continuum of care for the individuals they serve. A long-term care provider may touch the same individual during various steps of his or her journey along the health care continuum. Our members serve an individual in either an outpatient rehabilitation setting or during a short-term rehabilitation stay. If that same individual is no longer able to be cared for safely at home or cannot return to his or her home after a hospital discharge, the nursing facility becomes that individual’s home and provides needed health care services to the individual. Long-term care providers are also experts in end-of-life and palliative care, providing those services to their residents who are in need of those services. Many individuals and family members want to stay with the same health care provider and find comfort in consistency, rather than a fragmented health care system. The CON program, the licensure process, and Medicaid reimbursement should give priority to licensed nursing facility providers to offer additional services to its residents, such as hospice care.

Through its regulatory process, the Cabinet should recognize the importance of long-term care providers in the continuum of care. Many of our members are providing quality health care services in buildings that were built based on the original federal architectural standards from fifty years ago. These standards required that nursing facilities be built as “institutional-like” settings or “mini-hospitals.” Nursing facilities are not institutions; nursing facilities are home to some 23,000 Kentuckians. Only by modernizing the CON program, licensure process, and Medicaid reimbursement can our members modernize their existing structures to create a physical environment that was not contemplated fifty years ago, such as renovating semi-private rooms to create private rooms for our member’s residents.

KAHCF supports a CON process, licensure process, and Medicaid reimbursement that incentivizes quality. KAHCF recommends that the CON and licensure process be updated to recognize nursing facility providers as the quality solution throughout the continuum of long-term care. Today, the regulatory scheme governing nursing facilities and the Medicaid reimbursement model encourages a narrow view of long-term care providers and their ability to provide long-term care services and supports on both an outpatient and in-home setting. In many cases, nursing facilities interested in converting semi-private rooms to private rooms – in order to respond to patient preference – are prohibited due to the cost restrictions.

KAHCF supports Improving Access to Care. KAHCF supports the CON process for long-term care services. However, the Office of Health Policy should support innovation among providers and how they work together to serve the needs of their communities to benefit

Kentucky as a whole. KAHCF recommends that the Office of Health Policy allow cooperating parties to transfer and sell licensed nursing facility beds from one county to another county as long as certain criteria are met.

KAHCF recommends that in order for licensed nursing facility beds to be moved out of one county to another county that the following conditions be met:

- (1) There is less than a 95% occupancy rate in the county from where the beds are transferred;
- (2) There is at least a 95% occupancy rate in the county that will receive the licensed nursing facility beds; and
- (3) No more than ten (10) beds can be transferred from one county to another.
- (4) Bed transfers are limited to one time a year.¹

This is a logical market-driven solution to access to care.

KAHCF supports Improving Value of Care. KAHCF supports reimbursement methodologies that make sense with regard to both value and consumer demand. Long-term care providers are experiencing changes in the demands of its consumers. The demand for more modern facilities; private rooms; availability of technology and wireless connections within a facility; demand for outpatient rehabilitation and short-term rehabilitation within a facility; and health care campuses that meet the demand for the full continuum of care within the aging community.

The CON process, the licensure process, and Medicaid reimbursement should utilize current nursing facilities to demonstrate the value for long-term care services and supports.

KAHCF supports Promoting Adoption of Efficient Technology. The Medicare and Medicaid Electronic Health Records (“EHR”) Incentive Programs provides incentives to certain “eligible professionals” and hospitals to adopt, implement, upgrade or demonstrate meaningful use of certified EHR technology. Long-term care providers were noticeably left out of the incentive payments for the meaningful use of certified EHR technology. However, many KAHCF members have adopted the use of EHR technology within their facilities – at their own expense - because they understand the importance of using technology to improve the delivery of care and reducing costs.

On October 6, 2014, President Obama issued an Executive Action outlining changes to the Five-Star program for nursing facilities. One set of changes to the Five-Star program is the addition of three quality measures to the current nine that comprise the Quality Measures. The three quality measures will be added by next January. The three new quality measures are as follows:

1. Re-hospitalizations;
2. Discharge back to community;
3. Antipsychotic use.

¹ The cooperating parties would file a “Notice of Intent to Transfer” with the Office of Health Policy, which could be challenged by an Affected Party. The occupancy rate in a county can also be challenged based on circumstances such as an unimplemented CON or closed facility with non-utilized beds.

The adoption of EHR technology will assist long-term care providers in achieving the quality goals set by the Federal government. In a recent Issue Brief published by The Office of the National Coordinator for Health Information Technology, it was recognized that “transitions across acute, post-acute, and long-term care settings are common and can be very costly.”² Although recognizing that long-term care providers were not included in the Medicare and Medicaid EHR Incentive Programs, the issue brief makes it clear that long-term care providers, hospitals, and other community referral partners must communicate electronically “to improve care coordination, care delivery, patient outcomes, and patient experience.” EHR incentive payments that align with the Five Star quality measures make sense, without placing additional mandates on nursing facilities. KAHCF recommends that the Cabinet for Health and Family Services adopt new payment and delivery models to encourage the adoption of EHR technology by nursing facilities – which will improve care coordination and reduce costs.

Although KAHCF supports modernizing the CON program, KAHCF does not have any recommendations regarding whether any services should no longer require a certificate of need in order to be implemented.

Again, thank you for accepting these comments on behalf of KAHCF members. We always welcome the opportunity to collaborate on these very important public policy issues. If you need additional information or have any questions, please do not hesitate to contact me.

Sincerely,



Elizabeth A. Johnson
President

² HealthIT.gov, *Health IT in Long-term and Post Acute Care Issue Brief*, March 15, 2013.